IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 5081 of 2005

DYANESH S. SHAH ... Petitioner

vs.

The Malegaon Municipal Corporation
& ors. ..... Respondents

Mr. P. N. Joshi for Petitioner
Mr. S. M. Sabrad for Respondent nos. 1 and 2.
Mr. B. Kakade AGP for Respondent no.3.

CORAM: **F. I. REBELLO & ROSHAN DALVI JJ.**
Date: 24/11/2005

P.C.

Rule. Heard forthwith.

1. The Petitioner is aggrieved by the action of the Respondent no.1 who by their communication dated 25.4.2005 rejected the Petitioner's application to construct on plot Nos. 1, 24, 57, 75, 113 and 120 on survey no. 116/1 of Sangameshwar ward. By the said communication the Respondent no.1 intimated to the Petitioner that the land is affected by the flood line and is included in the green belt in the proposed draft

development plan, Malegaon (second division).

2. It is the case of the Petitioner that under the provisions of the Maharashtra Regional Town Planning Act 1966 the land was shown as reserved for the purpose of shopping centre, vegetable market, play ground and DP Road. The Petitioner on 17.11.1998 gave a purchase notice under section 127 of the MRTP Act and prayed that the said land should either be acquired within a period of 6 months or be released from reservation. As the Respondent no.1 took no action, writ petition no. 1338 of 2001 came to be filed praying inter alia for a declaration that the land had been released from reservation and consequently the Petitioner should be permitted to develop the same. This court by order dated 23.3.2001 allowed the said writ petition and held that the reservation in respect of the land bearing survey no. 116/1, situated at Malegaon admeasuring about 2 hectors and 67 ares has lapsed and the Respondents were directed to release the same forthwith from reservation and permit the Petitioner to

develop the said land.

3. It is the case of the Petitioner that subsequent to that they submitted the layout plan which was sanctioned by Respondent no.1 by order dated 19.9.2001. The Petitioner was directed to pay certain amounts which was paid by him. One of the condition was that the Petitioner should get the said land converted into non-agricultural use. The Petitioner therefore, approached the Collector Nasik. Thereafter the Petitioner obtained NA., permission by communication dated 7.8.2002. According to the Petitioner he had paid the amount for NA permission and for conversion also. The Petitioner thereafter divided the land into several plots and executed the agreement for sale. It is only after the Petitioner had applied for construction that the impugned communication had been forwarded to him.

4. On behalf of the Respondent no.1 no reply has been filed. However, on behalf of the Town Planning Department the Assistant Director of Town Planning Nashik, S.D. Randive had filed an affidavit in reply. It

is pointed out therein that the plan came into force with effect from 1.4.1986. The rest of the averments refer to the reservation and in respect of the petition filed in this court. It is also pointed out that Respondent no.1 had filed an affidavit in this court that on account of the non- availability of the funds the Council was unable to acquire the land. It was the contention of the department that the act was against the interest of public at large. It was also pointed out that when the development plan was in progress the draft development plan was published wherein the Petitioner's land is shown reserved as site no. 379, Play Ground, Site no. 376, Shopping Center partly site no. 375 vegetable market and 12 mtr., wide North- South D.P. Road and the remaining land is shown as Green Belt. It is also pointed out that remarks from the Irrigation Department had been taken regarding the flood line in the year 2000. The flood lines are marked in the draft development plan (IInd revised) and the certificate dated 30.5.2005 was mistakenly issued to

the Petitioner. It is not necessary to refer to the other aspects of the matter.

5. The short question that remains for consideration is whether after the land is de-reserved was it open to the Respondent no.1 to reject the application for construction on the ground that in the proposed development plan the land is once again reserved for public purpose as set out earlier. In our opinion the issue is no longer res integra considering the various judgments of the Apex Court in *Balkrishna H. Sawant & ors. Vs. Sangli, Miraj & Kupwad City Municipal Corporation & ors.* [(2005) 3 SCC 61]. In that case also there was reservation. The Municipal Corporation, as they did not have sufficient financial resources, did not acquire the land and accordingly passed a resolution to that effect. There was subsequent to proposal to recall the resolution but that was rejected by the State Government.

6. In the instant case what we find is that after a period of 10 years of the plan being notified, the Petitioner herein

approached this court for a declaration and the declaration was granted in favour of the Petitioner. Subsequent to that the Petitioner applied for development which was sanctioned. In other words a right accrued in favour of the Petitioner herein. Once that be the case it was not open to the Respondent to once again reserve the land for a public purpose and for the same public purpose, as in the instant case. If the Petitioner had not applied for development then the case of the Respondent could have been considered. In the instant case the Petitioner had, earlier in time, applied for development and the Respondent no.1 Corporation had considered the application and allowed the development and also granted NA permission. The Petitioner having a vested right, it is not open for the Respondent no.1 to once again reserve the land. This view of ours is supported by the judgment of the Apex Court in *Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. And ors.* [(2003) 2 SCC 111]. In that view of the matter the rejection on that ground will have to be set

aside.

7. We then come to the second contention viz., in so far as the flood line is concerned. The department had by communication dated 30th May 2005 intimated to the Petitioner that the land is not affected by the flood line. According to the Respondent in terms of the information received from the very same department, the flood line had been shown in the development plan. This is a disputed question of fact and it would not be possible for this court to consider the communication dated 30th May 2005. It will be open for the Respondent to consider the same while considering the sanction for permission as sought for by the Petitioner herein. In the light of that the following order:

8. The Petition is made absolute in terms of prayer clause (a). The Respondents are directed to consider the application of the Petitioner for development, according to law and not by considering that the land is shown as reserved in the draft development plan. Rule made absolute accordingly . No order as to costs.

(F. I. REBELLO J.)

(ROSHAN DALVI J.)